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Attorney for Defendant, Rosa Di Simone

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In Re:)	Case No. 10-16737 (NLW)
ROSA DI SIMONE and STEFAN)	Adv. No. 10-01712 (NLW)
NADZAM,)	
Debtors.)	RESPONSE TO CERTIFICATION OF
)	KENNETH S. JANNETTE
CHASE BANK USA, N.A.)	
Plaintiff,)	
v.)	
ROSA DI SIMONE,)	
Defendant.)	

The Defendant, Rosa Di Simone, (hereinafter referred to as "Di Simone") through her attorney, Jonathan Stone, by way of Response to Certification of Kenneth S. Jannette shows:

1. The Certification of Yasemin Kabacaoglu does not set forth or articulate all of the elements to lay the predicate foundation to introduce computer records. (See Document 11-1 to the Certification of Kenneth S. Jannette In Opposition to Motion to Dismiss).

2. In paragraphs 3 and 4, Yasemin Kabacaoglu states:

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3. "Attached as Exhibit A are monthly statements for the Account. These statements are business records made and kept in the ordinary course of Plaintiff's business of extending consumer credit. These statements and the entries in them are made at or near the time the act, condition or event underlying them occurred."

4. "As evidenced by the attached statements for the Account, Defendant incurred \$18,513.00 of retain charges from December 2, 2009 through January 27, 2010."

3. The Exhibit attached to Yasemin Kabacaoglu's certification contains no information to indicate that Defendant made a request for a credit card, and no indication that Chase Bank USA, N.A. opened a credit card in the name of the Defendant. These statements are "boiler plate" conclusions on the part of Yasemin Kabacaoglu and there is no document attached to this certification to support any of these conclusions. If in fact Chase Bank USA, N.A. has an application for a credit card from Defendant, it would be a very simple matter to attach to the Motion an authenticated copy of such application. Yasemin Kabacaoglu is not competent to make such a certification to the purported facts stated in paragraphs 3 and 4.

4. The alleged credit card statements are uncertified, and therefore do not meet the requirements to prove the contents of a writing as set forth in Federal Rules of Evidence 1002, 1003, and 1004.

4. For these reasons, the certification of Yasemin Kabacaoglu should be struck.

WHEREFORE, the Defendant, Rosa Di Simone, requests that this Court enter an order dismissing the Complaint in its entirety with prejudice and declaring the debt in question dischargeable, awarding Defendant's attorney fees and costs pursuant to 11 U.S.C. §523(d).

Respectfully submitted,

Dated: August 8, 2010

By: /s/ Jonathan Stone
Jonathan Stone, Esq.
Attorney for Rosa Di Simone